No. 610

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

ANGELUS MILLING COMPANY, *Petitioner*

vs.

JOSEPH D. NUNAN,
Commissioner of Internal Revenue

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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Prew Savoy, on behalf of the Angelus Milling Company, prays that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, entered on July 24, 1944, affirming the decision of the Tax Court of the United States.

OPINIONS BELOW

The first decision of the United States Processing Tax Board of Review of January 20, 1942 (R. 71), and its second decision of August 5, 1942, together

with supporting and dissenting memoranda (R. 80), denying respondent's motions to dismiss, were not reported. The findings of fact, opinion and decision of the Tax Court of the United States, granting a motion to dismiss, (R. 91) is reported at 1 T.C. 1031. The opinion of the Circuit Court of Appeals (R. 133) is not yet reported.

JURISDICTION

This case involves a claim for the refund of $145,839.12, paid as processing tax on wheat, under the Agricultural Adjustment Act of May 12, 1933, as amended. The Tax Court of the United States, on May 4, 1943, dismissed the proceeding before it for lack of jurisdiction, refusing to consider the claim for refund on the merits (R. 98). The case was brought to the United States Circuit Court of Appeals for the Second Circuit by a Petition for Review filed by the Petitioner with the clerk of The Tax Court of the United States, on July 27, 1943 (R. 99), pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code, and Section 906(g) of the Revenue Act of 1936, as amended by Section 510 of the Revenue Act of 1942. The Judgment of the United States Circuit Court of Appeals for the Second Circuit, affirming the decision of The Tax Court of the United States, was entered July 24, 1944 (R. 139). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Petitioner may maintain its suit for refund of taxes, where the claim for refund contained the nature of the claim, but not the data in support thereof, and where the Commissioner, through an examination of the claim on the merits by a deputy collector, learned the facts and obtained the basic data which, if presented in the claim, should have caused a refund.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the statutes and regulations involved are presented in Appendix A of the Appendices, printed as a separate document.

STATEMENT

This appeal involves a claim for refund of $145,839.12, paid as processing tax on wheat, under the Agricultural Adjustment Act of May 12, 1933, as amended, declared unconstitutional in *United States v. Butler*, 297, U. S. 1.

The proceeding was initiated August 20, 1941, before the United States Processing Tax Board of Review (R. 7), for a review of the disallowance by the Commissioner of Internal Revenue, under date of May 23, 1941 (R. 40), of the Petitioner's claim for refund (R. 11-39).

The disallowance was based on two grounds: (1) that Petitioner was not the taxpayer, and (2) that the claim filed was not complete, in accordance with the statute and Treasury regulations.

On October 4, 1941, Respondent filed a Motion

for Better Statement of Claim (R. 42). On November 21, 1941, Petitioner filed an Amendment to Petition in Response to Motion for Better Statement of Claim (R. 49), having in the interim been given copies of Petitioner's Processing Tax Returns by the Commissioner, who had therefore refused to produce such copies, on the grounds that they were the returns of Niagara Falls Milling Co.

On November 26, 1941, Respondent filed a Renewal of Motion for Better Statement of Claim to apply to Petition as amended (R. 54). At the argument on the Motion, Petitioner was allowed to amend the Petition, and filed an Amended Petition December 29, 1941 (R. 63). The Respondent's Motion was then denied, January 20, 1942. (R. 71.)

On February 16, 1942, Respondent filed a Motion to Dismiss, on the grounds that the claim was incomplete and that Petitioner was not the taxpayer, so that the Board lacked jurisdiction to review the Commissioner's disallowance of the claim for refund. (R. 72.) This motion was dismissed, after argument and the submission of evidence, on August 5, 1942 (R. 80), and on August 21, 1942, Respondent filed an Answer. (R. 82.)

On October 22, 1942, the Appeal was set for hearing on the merits on February 8, 1942. (R. 5.)

On October 21, 1942, the Revenue Act of 1942 became a law. Under Section 510 thereof, the life of the United States Processing Tax Board of Review terminated December 31, 1942, and The Tax Court of the United States thereafter had jurisdiction of all cases of that Board in their then *status*.

On January 29, 1943, Respondent filed a Motion to Dismiss on Jurisdictional Grounds with The Tax Court. (R. 86.) The Tax Court heard arguments thereon, received evidence, and on May 4, 1943, granted Respondent's Motion. (R. 91, 98.)

Petitioner thereupon filed a petition for review by the United States Circuit Court of Appeals for the Second Circuit (R. 99). That Court, on July 24, 1944, affirmed the decision of The Tax Court. (R. 133, 139.)

From the date of the filing of the Petitioner's claim for refund to the date of its disallowance, including the examination of the claim on the merits by the Deputy Collector, the Commissioner contended *only* that Petitioner was not the taxpayer, and that Niagara Falls Milling Co. was the taxpayer. This being a fact to be proved at a trial on the merits, the Processing Tax Board of Review, The Tax Court, and the Circuit Court of Appeals accepted Petitioner's allegations on the subject as true, and refused to dismiss on such ground.

The dismissal was based on the ground that the claim for refund *on its face* was incomplete and not in accordance with the statute and the pertinent Treasury regulations, and that Petitioner had failed to show that such defect had been waived by the Commissioner. The question of a defect in the claim had never been raised *before* the Commissioner's letter of disallowance, and before Petitioner had refused to withdraw its claim to permit the Commissioner to make a settlement with Niagara Falls Milling Co., *after* the claim had been examined on the merits, and *after* the Commissioner had all of the

data lacking on the face of the claim. Several days were spent by representatives of the Commissioner examining the merits of the claim, and the question of a defect in the claim was never there raised. The usual letters, written all other claimants, requesting supplemental information and permitting its filing, to cure defects on the face of the claim, were never sent this Petitioner.

On the date on which the claim was rejected, the Commissioner, as a result of the examination made, had in his possession all of the data missing on the face of the claim, which showed a margin favorable to Petitioner's claim.

The reasons for not requesting supplemental information, and the reasons why any defects in the claim have been waived, and thereby cured, will be obvious from the facts brought to the attention of the Processing Tax Board of Review, The Tax Court, and the Circuit Court of Appeals.

The following facts, whether sworn to or supported by evidence filed, have never been controverted by other facts; because they are true and are known to be true by the Commissioner.

They are:

Petitioner is a corporation, organized and existing under the laws of the State of New York, with its principal office at Niagara Falls, New York. On June 13, 1933, the name of Petitioner was changed from "Middleport Flour Mills, Inc." to "Angelus Milling Company, Inc." Since that date, Petitioner has been known as "Angelus Milling Company, Inc." and "Middleport Flour Mills," the name "Angelus"

connoting the brand of flour, and the name "Middleport" designating the locale of one of the flour mills.

During the period July 9, 1933, to January 6, 1936, both dates inclusive, Petitioner was a processor of wheat.

Niagara Falls Milling Co., Inc., hereinafter called "Niagara," is a corporation, organized and existing under the laws of the State of New York. During the period July 9, 1933, to January 6, 1936, both dates inclusive, Niagara was a processor of wheat.

During the period July 9, 1933, to January 6, 1936, Niagara and Angelus had one and the same majority stockholder, a common President, a common set of officers, including a common Secretary (later Vice President), one J. W. Schwan, who signed all tax returns and checks in payment of tax, a common set of books of account, a joint bank account, and the same employees.

When the flour of Petitioner was manufactured and sold, Petitioner was charged with the cost of wheat and the cost of manufacture, overhead, etc., and was credited with the selling price. The same procedure was followed with respect to the wheat and flour of Niagara.

For the period July 9, 1933, to January 31, 1935, *joint returns*, on account of the processing of wheat by Petitioner and Niagara, at the mill at Lockport, were filed with the Collector of Internal Revenue for the *28th District* of New York (R. 110, 113-120), and tax in the sum of $324,016.25, was paid him on account of such proceedings.

For the period February 1, 1935, to November 30, 1935, returns were filed, in the name of Niagara, on

account of the processings of wheat by both Petitioner and Niagara, at the mill at Lockport (R. 110-111, 121) and at the mill at Middleport (R. 111, 123), with the Collector of Internal Revenue for the *28th District* of New York, and tax, in the sum of $110,029.02, was paid him on account of such processings.

All of the foregoing returns were kept in the files of Niagara in the Bureau of Internal Revenue, where counsel for Petitioner obtained them, after the filing of the Petition with the Processing Tax Board of Review, the files of the two corporations being together in the Bureau of Internal Revenue in the custody of the same person.

Of the aforesaid sums paid as processing tax on wheat, the following amounts were paid said Collector, on the dates below set forth, on account of the processings of wheat of Petitioner listed below, out of monies belonging to Petitioner:

Date	Units Processed (in bushels)	Tax Paid
1933		
July-August	19,505	$ 862.02
September	20,619	3,489.05
October	24,368	5,447.69
November	21,728	6,185.57
December	26,067	7,728.11
1934		
January-February	63,797	15,991.82
March	18,471	9,933.35
April-May	52,888	16,866.78
June	28,144	8,663.05
July	21,920	8,866.82
August	35,475	8,696.02
September	27,674	8,947.71
October	27,438	9,140.43
November	22,459	9,078.89
December	36,091	7,585.26
1935		
January-February	44,248	13,862.57
March-April	47,597	13,864.29
May	39,009	9,549.69
June	21,237	6,279.70
July	21,143	5,563.14
August	24,998	4,034.66
September	32,852	5,274.70
October	30,187	840.67
	706,906	$186,751.99

On or about June 23, 1936, *joint claims* were filed, on Form 843, by "*Niagara Falls Milling Co., Inc., and/or Middleport Flour Mills, Inc.*" with the Col-

lector of Internal Revenue for the *28th District* of New York, for the refund of processing taxes on wheat paid by Petitioner and Niagara, in the total sum of $454,045.27 (Exhibit A-1, A-2 and A-3, attached to the Petition), (R. 11-19), paid to him on account of the processing of wheat by them.

On or about June 30, 1937, Niagara filed a claim for the refund of processing tax on wheat, in the sum of $436,231.73, with the Collector of Internal Revenue for the *28th District* of New York, paid to him on account of the processing of wheat by Niagara and by Petitioner. *This claim was complete on its face.* (Exhibit B attached to the Petition.) (R. 20-29.)

On or about August 15, 1938, Petitioner filed a claim for the refund of $145,839.12, paid out of its monies, on account of the processing of wheat by it, with the Collector of Internal Revenue for the *28th District* of New York, designating this claim as *"Amendment to Claim."* (Exhibit C attached to Petition) (R. 30-39), and showing its interrelationship with Niagara. (R. 32-33.)

Schedule A, which contained the volume of sales made and the taxes paid, bore the following caption—(R. 32):

> "Allocation of Refund Due Niagara Falls Milling Company and Middleport Flour Mills Inc. (Now Angelus Milling Co., Inc.)"

There followed an explanatory statement respecting the two corporations and the allocation of the refund of taxes claimed.

Under date of November 18, 1938, the Internal Revenue Agent in Charge of the Internal Revenue Service at Buffalo, New York, the *28th Collection District* of New York, in connection with the investigation of the claim of Niagara, sent to Mr. Harry Dickinson, the President of both Petitioner and Niagara, the following letter:

> "In connection with the investigation of Claim for refund under Title VII, Revenue Act of 1936—Claim F5899;[1] you are requested to allow examination of the following records of the Middleport Flour Mills, Inc., and Angelus Flour Mills, Inc.:
>
> General Ledgers of both corporations for the years 1935 and 1936.
>
> Minute Books of both corporations.
>
> "In view of the fact that the investigation will be completed within the next few days I would request that these records be made available to me on Monday, November 21, at Room 1011, White Building Buffalo, New York.
>
> Respectfully,
>
> J. BERNARD LEIBEN,
>
> JBL:E. *General Deputy Collector*" (R. 125)

This letter was occasioned by the fact that the *Commissioner's* agent knew from the returns and claims filed, that Middleport, Angelus and Niagara were interrelated. The conferences which followed established that the companies had a common set of

[1] Claim of Niagara (R. 20-29).

books of account, a common bank account and common officers.

On or about September 4, 5, 6 and 7, 1940, the aforesaid J. Bernard Lieben, Deputy Collector of Internal Revenue, *28th District* of New York, and other representatives of Respondent, conferred with the accountant for Petitioner, respecting Petitioner's claim for refund, fully investigating said claim, and as a result of such conference and examination obtained, from the common books of account of Petitioner and Niagara, all of the basic data and figures required to complete Petitioner's claim. (Appendix B.)

Consideration of Petitioner's claim on the merits was the natural result of the Bureau's examination of Niagara's claim and of the common books of account and bank account of the two companies, which followed Lieben's letter of November 18, 1938.

Under date of May 23, 1941, the Commissioner of Internal Revenue, without having at any time requested from Petitioner any additional information, *in view of the complete information in his possession, a copy of which he gave Petitioner's accountant*, and without the usual conferences in Washington, granted in every other such known claim, in a letter sent by registered mail, disallowed the claim for refund of Petitioner filed August 15, 1938, in its entirety (Exhibit D attached to Petition) (R. 40), relying on a technicality, *and for the first time complaining of the incompleteness of the claim for refund.*

On that date, *the books* of Petitioner and of Niagara were involved in bankruptcy proceedings in-

volving Niagara and were unavailable to Petitioner but were available to the Commissioner, and he had all of the data which the claim of Petitioner lacked. Also, the time to amend the claim had expired

Prior to filing a petition for a review of the disallowance of the Commissioner with the Processing Tax Board of Review, counsel sought to obtain from the Commissioner copies of the processing tax returns of Petitioner and Niagara. Such copies were refused, for the reason given that they were in the file of Niagara and not that of Petitioner. Consel finally obtained such copies and filed them with the Board in connection with Respondent's Motion for Better Statement of Claim. (R. 47, 110-111, 113-124.)

The foregoing facts, none of which can in good faith be denied,—the filing of joint processing tax returns, the filing of joint claims for refund and separate claims for refund, the separate claim for refund of Petitioner showing the interrelationship with Niagara, the Bureau procedure as to these returns and as to the claims for refund, the examination by the Commissioner of the claims for refund of both Niagara and Petitioner on the merits, and the giving of the basic data lacking on the face of the claim to Petitioner, definitely show:

1. That from 1933 to 1936, 1938 to 1940, and 1941 to 1942, the Commissioner knew of the interrelationship of Niagara and Petitioner.

2. That an examination of Niagara's claim for refund on the merits, which claim contained Petitioner's basic data, was a practical impossibility without

also examining Petitioner's claim for refund on the merits.

3. That Petitioner's claim for refund was examined on the merits, in 1940, at which time the Commissioner obtained all of the data not supplied on the face of the claim, which data supported the refund.

4. That, if all of the claims for refund filed be considered together, Petitioner's claim is not defective, as Niagara's claim contains all of the margin data required.

5. That, in any event, the Commissioner waived every defect in Petitioner's claim for refund, regardless of his letter of disallowance, and regardless of the fact that the usual hearings or opportunity to supplement the claim were not accorded Petitioner, by examining Petitioner's claim on the merits and obtaining all of the required data lacking on the face of the claim.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In failing to hold that, if the claims for refund of Niagara and Petitioner be considered together, Petitioner's claim is not defective.

(2) In failing to hold that, having examined Petitioner's claim for refund on the merits, and having all of the margin data lacking on the face of the claim, the Commissioner waived any defect in Petitioner's claim.

(3) In holding that, after a taxpayer has filed a timely claim for refund, which has been considered on the merits, the Commissioner, by such an examination, which results in his obtaining all of the data

lacking on the face of the claim, does not waive any defects of form in the claim, but the taxpayer must amend as to any defect in the form of the claim, before its rejection.

(4) In holding that, in dealings with Government officials, a taxpayer may not rely upon the same rules of equity, justice and fairness which apply as between individuals, but can be misled into not amending a claim, defective as to form, until it has been rejected and when it is too late to amend.

(5) In dismissing Petitioner's claim for refund for lack of jurisdiction and in refusing to order a hearing on the merits.

REASONS FOR GRANTING THE WRIT

(1) The question involved presents a basic issue, not yet decided by this Court, which is of "great importance in the administration of the revenue acts." (Appendix C.) The question is not limited in application to claims for refund of processing taxes, but is equally applicable to all claims for refund. Thousands upon thousands of claims for refund are filed each year, and will be filed in the Second Circuit, subject to the decision below, until corrected. The preponderance of such claims are filed without the benefit of counsel versed in the intricacies of the applicable statutory provisions and regulations. Freely, the claimants confer with Government officials, in connection with their examination of claims for refund on the merits, until long after the statutory time to amend has expired. When all of the facts supporting the claim have been thus brought to the attention of the Commissioner, he should not be

permitted to reject the claim for a defect in form, especially when a mere amendment of the claim, supplying the data which the Commissioner already has, would cure the defect. Such a defect, under such circumstances, circumstances which exist in this case, should be deemed to have been waived.

That this question is of great general importance in the administration of the Revenue Acts cannot be denied by the Solicitor General. In fact, in fairness to taxpayers, and in frankness, the Solicitor General should join in this request, if his representations to this Court, in 1932, were correct in *United States* v. *Memphis Cotton Oil*, 288 U. S. 62 (Appendix C.)

In his Petition for a Writ of Certiorari, in *United States* v. *Memphis Cotton Oil, supra*, the sole question presented was the very same question as that presented in the instant case. (P. 1, App. C.) The petition never mentioned the presence of the question which formed the basis for the decision, and *the petition was granted.*

In connection with the reasons for granting the writ, the Solicitor General said:

> ". . . They (United States v. Factors and Finance Co. and the then subject case) arise under the same statutory provisions and are *equally* of great importance in the administration of the revenue acts. (Italics supplied.)
>
> "2. The decision in the instant case is an extension of the doctrine laid down by the Court of Claims in the Factors and Finance Company case. In the instant case the taxpayer never filed any paper specifying the nature of its claim

for refund. (Not so here. R. 30-33.) The Commissioner's knowledge of grounds on which a claim might have been based came solely through his agents. (So here as to the supporting data, App. B.) As to one of the taxable years in question that knowledge reached the Commissioner at a date when the period for filing a claim for refund of taxes for that year had expired. (Not so here, App. B.) As to both years the taxpayer entirely failed to follow the statutory requirement that the facts relied upon in support of the claim should be clearly set out. If the decision of the Court of Claims in the instant case is correct, the strict requirements of the statute, that claims for refund be filed by taxpayers, are almost entirely abrogated. In such an event a taxpayer who had filed a general claim within time could secure a refund if entirely without the taxpayer's knowledge the Commissioner had learned that an over-payment of taxes had been made by him." (App. C.)

Of course, that is true, and the fact is that it is the duty of the Commissioner to refund tax he finds has been overpaid, without the requirement that a claim for refund be filed, and he very frequently does so.

However, the fact of importance now is that the question presented in the Petition for the Writ of Certiorari, in the *Memphis Cotton Oil* case was not decided, a fact which the Court below failed to note. This Court said, at page 73:

> "We find it unnecessary to determine whether the conduct of the Commissioner in investigating the claims upon their merits and reporting to the claimant the result of his inquiry was a waiver of defects of form which would call for the return of overpayments although no amendment had been offered."

The question presented in the *Memphis Cotton Oil* case and in the instant case has never been decided. If it was of general importance then, in 1932, it is of greater importance now, when tax statutes are more complicated, taxes are higher, and more claims for refund are being, and will be, filed.

If the importance of the question was such as to support the granting of a writ requested by the Government, it is respectfully urged that the importance of the question now equally justifies the granting of a writ requested by a taxpayer.

The question should be decided now and clearly settled, in the interest of a fair and just administration of the revenue acts, before other Circuit Courts make the error the Court below made, in its interpretation of the decision in *U. S.* v. *Memphis Cotton Oil Co., supra.* (R. 137.)

(2) The decision below is in substance in conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit in *U. S.* v. *Humble Oil and Refining Co.* 69 F. (2d) 214, (decided a year *after* the decision in *U. S.* v. *Memphis Cotton Oil Co., supra*), with the decision of the Court of Claims in *Memphis Cotton Oil Co.* v. *U. S.* 59 F. (2d) 276 (affirmed on other grounds in 288 U. S. 62) and with decisions of

the District Court for the Eastern District of Pennsylvania.

In the *Humble Oil* case, the Court held that the only restriction on the Commissioner is that the claim be timely filed. The facts in support thereof may be filed at any time, and such a defect in form can be waived.

The Court of Claims, in the *Memphis Cotton Oil* case had before it the very question presented in the instant case and decided that question in favor of the taxpayer-claimant, exactly contrary to the Court below.

That Court of Claims said, at page 280:

> "The Plaintiff might have amended the claims before the Commissioner had acted thereon so as to state the facts relied upon, but the facts obtained by the Commissioner before he had acted rendered amendment unnecessary *and* fulfilled the requirement of the regulations that all facts relied upon should be set forth by the taxpayer."

We are presented with that very same situation in the subject case.

While it is true that this Court affirmed that decision, the affirmance was based on other grounds, and *the question which formed the basis for the granting of the writ went unanswered*. (288 U. S. 62/73.) It necessarily follows that, in cases coming before the Court of Claims, which involve the very question involved in the instant case, the decision of that Court will be in accordance with its

decision in the *Memphis Cotton Oil* case, (59 F. (2d) 276/279-280) and contrary to the decision of the Court below. Thus, there still exists a conflict, despite this Court's affirmance in that case.

Even in *Factors and Finance Co.* v. *United States*, 56 F. (2d) 902, wherein the amendment of a claim was involved, the Court of Claims went out of its way to point out that, if the Commissioner of Internal Revenue is not misled as to the facts, but has all of the facts lacking on the face of the original claim, the reason for the rule requiring that such facts be presented therein ceases to exist, and the rule is no longer applicable.

So too is there a conflict between the decision below and the decisions of the District Court for the Eastern District of Pennsylvania, from which the Government has not appealed. In that district then, the law is exactly opposite from the law in the Second Circuit.

The District Court for the Eastern District of Pennsylvania has never wavered in its decisions, both before and after the decision in the *Memphis Cotton Oil* case. See *Union Trust Co.* v. *McCaughn*, 24 F. (2d) 459, *Wunderle* v. *McCaughn* 38 F. (2d) 258, and *Wellman* v. *United States*, 4 F. Supp. 155.

In the *Wellman* case, the last case decided by that Court, a decision from which the Government failed to appeal to the Circuit Court of Appeals for the Third Circuit, the Court pointed out that, while the form was never corrected, the examination of the facts for 1918, necessary to determine the tax liability for 1919, was such as to give the taxpayer to

understand that formal amendment was unnecessary. Such is the case here.

If there existed a conflict between the decisions cited in the Petition for a Writ of Certiorari, in the *Memphis Cotton Oil* case, and the decision therein sought to be reviewed, there exists one here, for the decision of the Court of Claims in that case, though affirmed on other grounds, still stands. Since this Court did not decide the question presented therein, and has not since decided the question, *the conflict in decisions must necessarily still exist.*

The instant case is unlike the cases of *Samara* v. *United States*, 129 F. (2d) 594, *Cudahy Packing Co.* v. *United States*, 126 F. (2d) 429, *Landrum* v. *Commissioner*, 122 F. (2d) 857, *Tennesse Consolidated Coal Co.* v. *Commissioner*, 117 F. (2d) 452, and *Lee Wilson and Co.* v. *Commissioner*, 111 F. (2d) 313. In all of those cases, the Commissioner gave the taxpayer every opportunity to produce the facts, and the taxpayer refused to do so. In the instant case, the taxpayer gave the Commissioner all of the facts, the claim was considered on the merits, and then was rejected (1) on the grounds that this claimant was not the taxpayer and (2) for defects of form.

The divergent opinions of the Courts on the meaning of the decision in the *Memphis Cotton Oil* case, with respect to the question left unanswered in that case, require a review by this Court of the decision below.

(3) The principles enunciated in *Tucker* v. *Alexander*, 275 U. S. 228, *U. S.* v. *Memphis Cotton Oil Co.*, *supra*, and *United States* v. *Henry Prentiss & Co.*, 288 U. S. 73, as a basis for the decisions therein.

are not reconcilable with those of the Court below. The philosophy of those decisions should be logically applied to the facts of the instant case, if there is to be a fair administration of the tax laws.

(4) A decision to the effect that taxpayers may not put their trust in Government officials—or be doomed to disappointment—in applying the principle that the United States may not be sued unless it consents, should not be permitted to control in any Circuit Court, especially in the presence of conflict on a question not yet decided by this Court. For 25 years, it has been the rule that "Men must turn square corners when they deal with the government." *Rock Island A. & L. R. R. Co.* v. *United States*, 254 U. S. 141, 143. It has never been previously admitted that taxpayers cannot expect similar and fair treatment from their Government—but must beware. The basic reasoning of the Court below in this respect is indeed an invitation to this Court to review the instant case.

The decision below ignores the reasoning of this Court in *Anniston Mfg. Co.* v. *Davis*, 301 U. S. 337, which is predicated on its decision in *United States* v. *Jefferson Electric Mfg. Co.*, 291 U. S. 386, in upholding Title VII of the Revenue Act of 1936. Surely, this Court did not mean to say that equitable principles were to apply only *against* the taxpayer-claimant.

The Petitioner herein could have cured the defect on the face of the claim, during the examination of the claim on the merits by the Deputy Collector, by filing the data which the Deputy Collector had, and which he eventually gave to the Petitioner. Is this

the sort of empty gesture, which the statute and this Court require, in the matter of a law based upon and interpreted according to equitable principles?

In true keeping with the principle so often followed by this Court, that the Commissioner must be advised of the true nature of the claim and of the facts in support of it—and when he has been so fully advised the conditions of the statute have been fully met—will not justice and the Congressional will better be served by a holding that, when a claim for refund may be remedied by amendment, if the Commissioner, through his agents, has in his possession all of the facts and basic data which would make a defective claim valid, if added to the claim, and has examined the claim on the merits, he is deemed to have waived defects in the form of the claim?

In the instant case, in the various claims filed by Angelus and Niagara (R. 11-39) in the joint returns filed by them, (R. 110-124) and in the examination of *both* claims on the merits (R. 40, 125-129, App. B), the Commissioner had in his possession all of the data lacking on the face of Petitioner's claim. He was not misled in any way. Then, when it was too late to amend, the Commissioner rejected the claim. The rejection on the grounds that Petitioner is not the taxpayer is a question of fact to be tried on the merits. The rejection, on the grounds of defects in the form of the claim should not be permitted, in the presence of the uncontroverted facts of this case. Good morals in dealings between the Government and taxpayers demands that, when a claim for refund has been considered on the merits,

as this claim was, and when the Commissioner has all of the basic facts lacking on the face of the claim, as he has in this case, any defect in the form of the claim is deemed waived.

CONCLUSION

It is respectfully submitted that this petition for a Writ of Certiorari should be granted.

PREW SAVOY,
Attorney for the Petitioner.

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